ANALYSIS

1995, No. 21

An Act to amend the Income Tax Act 1994

[*10 April 1995*

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Income Tax Act 1994 Amendment Act (No. 2) 1995, and shall be read together with and deemed part of the Income Tax Act 1994 (hereinafter referred to as the principal Act).

(2) Except as provided in subsection (3), and subject to sections 5 (2), 9 (4), 11 (2), 12 (2), 16 (2), 22 (2), 33 (2), and 34 (2), this Act is deemed to have come into force on 1 April 1995.

(3) Sections 28, 29, and 42 (4) shall come into force on the date on which this Act receives the Royal assent.

2. Application of principal Act—Section A 1 of the principal Act is amended by adding the following subsection:

"(3) This Act shall also apply with respect to late 1994–95 income years to the extent specified in section YB 7."

3. Incomes wholly exempt from tax—Section CB 1 (1) of the principal Act is amended by repealing paragraph (c).

4. Certain income from Niue exempt—Section CB 8 of the principal Act is amended by adding the following subsection:

"(4) This section does not restrict application of section CG 1 and the FIF rules and, for the purposes of those provisions, a company which derives its income exclusively or principally from Niue and is exempt from tax under subsection (1) (a) of this section shall be treated as a foreign entity."

5. Exemption for employee allowances and expenditure on account of an employee—(1) The principal Act is amended by repealing sections CB 12 and CB 13, and substituting the following section:

"CB 12. (1) An amount paid by an employer in respect of an employee's employment or service is exempt from tax where and to the extent that the amount—

"(a) Reimburses the employee for expenditure that, but for section DE 1, would be deductible in calculating the employee's assessable income for any income year; or

"(b) Is expenditure on account of an employee which, if incurred by the employee and but for section DE 1, would be deductible in calculating the employee's assessable income.

"(2) Any allowance, not being an allowance or part of an allowance which is exempt from tax under subsection (1), shall be exempt from tax to the extent to which—

"(a) The allowance is paid by an employer to an employee in respect of additional transport costs incurred by that employee in travelling between the employee's home and place of work for the purposes of the employee's employment with that employer; and

"(b) The allowance constitutes a reimbursement of the whole or part of additional transport costs incurred by the employee for the benefit or convenience of the employer in relation to that employment; and

"(c) Those additional transport costs were attributable to any one or more of the following factors:

"(i) The time or times of day at or during which, or the day or days of the week on or during which, the employee was required to perform the duties of that employment:

"(ii) The carriage, necessitating the type of transport used, of any plant, machinery, equipment, technical aid, goods, or material for use or disposal by the employee in the course of that employment:

"(iii) The fulfilling of an obligation under any Act:

"(iv) A temporary change in the place of work of the employee from the normal place of work, in relation to the same employer:

"(v) Any other condition of work of the employee:

"(vi) The absence of a public passenger transport system serving the place of work.

"(3) An employer may—

"(a) For the purposes of subsection (1), calculate the average amount of the expenditure incurred, being expenditure in respect of which a reimbursing allowance is payable, during each pay-period by any employee or group of employees; and

"(b) For the purposes of subsection (2), calculate the average amount of additional transport costs incurred during each pay-period by any employee or group of employees,—

and this section shall then apply as if the amount calculated under paragraph (a) or paragraph (b) had been incurred during each pay-period by each employee of the employer incurring expenditure of the same type in comparable circumstances.

"(4) In this section—

" 'Additional transport costs' means—

"(a) In relation to an employee and to any of the factors referred to in subparagraphs (i) to (v) of subsection (2) (c), the transport costs incurred by the employee in travelling between the employee's home and place of work in excess of the costs which that employee would ordinarily have been expected to incur in that travelling were it not for that factor; and

"(b) In relation to an employee and the factor referred to in subparagraph (vi) of subsection (2) (c), the transport costs incurred by the employee in travelling between the employee's home and place of work in excess of an amount equal to $5 for each day on which the employee attends that place of work to perform the employee's duties:

"Provided that, except in special circumstances, any distance in excess of 70 kilometres for any one day shall not be taken into account in calculating any additional transport costs:

" 'Public passenger transport system' means a public passenger transport service which—

"(a) Operates fixed routes and regular timetables; and

"(b) Is adequate and has the capacity to serve the place of work of the employer."

(2) This section applies to all allowances and payments (being expenditure on account of an employee) made on or after 1 April 1995.

6. Meaning of term "dividends"—Section CF 2 of the principal Act is amended by inserting, after subsection (9), the following subsection:

"(9A) Where any amount arises as a dividend under paragraph (c) or paragraph (d) of subsection (1) (or any corresponding dividend arises under paragraph (1) of that subsection) by reason of a difference between the market value of any property passing between a company and a shareholder and the consideration provided in respect of that property by the shareholder or the company, the Commissioner may, in making or amending any assessment, disregard the amount so arising if the Commissioner is satisfied that—

"(a) The consideration paid was an amount which the company considered was the market value of the property after having taken reasonable steps at the time the property was distributed, sold, otherwise disposed of, or acquired by the company to ascertain a market value; and

"(b) The shareholder (or the associated person, where appropriate) has subsequently paid to the company—

"(i) Any additional consideration necessary to reflect the market value of the property at the time of its distribution, sale, or other disposition to the shareholder; or

"(ii) A refund of any consideration provided by the company in excess of the market value of the property at the time it was acquired from the shareholder; and

"(c) Any necessary adjustments have been made to the accounts of the company or the shareholder (or, where appropriate, the associated person) in respect of that additional consideration or that refund."

7. Exclusions from term "dividends"—(1) Section CF 3 (3) (e) of the principal Act is amended by omitting the expression "paragraph (c)", and substituting the expression "paragraph (d)."

(2) Section CF 3 is further amended by inserting, after subsection (11), the following subsection:

"(11A) For the purposes of calculating the excess return amount on liquidation of a company, where and to the extent that—

"(a) The company had previously subscribed for shares in another company; and

"(b) The consideration for the subscription was excluded from the available subscribed capital of the other company due to any of paragraphs (vi) to (viii) of item b of the definition of the term 'available subscribed capital',—

the consideration is to be excluded from the cost of those shares when calculating the capital gain amount on sale of the shares or the excess over cost of the value of any distribution in specie of the shares."

8. Deemed rate of return method of calculation—Section CG 19 (1) of the principal Act is amended by omitting the word "and" from the end of paragraph (i) (A) of item a, and substituting the word "or".

9. Meaning of "fringe benefit"—(1) Section CI 1 (o) of the principal Act is amended—

(a) By omitting, from each of subparagraphs (ii) (A), (iii), and (iv) (A), the words "in terms of a determination made by the Commissioner":

(b) By omitting from subparagraph (v) the expression "section CB 12 (2) (a) to (f)", and substituting the expression "section CB 12 (2) (c) (i) to (vi)".

(2) Section CI 1 (q) of the principal Act is amended by omitting the expression "entertainment,".

(3) Section CI 1 is further amended by repealing paragraph (r), and substituting the following paragraph:

"(r) Any benefit that is a specified type of entertainment, except where—

"(i) Either—

"(A) The employee may consume or enjoy the benefit at a time to be chosen by the employee in the employee's discretion; or

"(B) The entertainment is excluded entertainment by reason of being enjoyed or consumed outside New Zealand; and

"(ii) The benefit is not consumed or enjoyed in the course of or as a necessary consequence of employment duties:".

(4) This section applies with respect to all benefits provided on or after 1 April 1995.

10. Interpretation—fringe benefit tax—Section CI 2 (2) of the principal Act is amended by omitting the words ", but subject to subsection (3)", and substituting the words "and section BB 7, but subject to subsection (3) of this section".

11. Taxable value of fringe benefit—(1) Section CI 4 (4) of the principal Act is amended by omitting the expression "(not being entertainment)".

(2) This section applies with respect to all benefits provided on or after 1 April 1995.

12. Use of test period to establish private use of motor vehicle—(1) The principal Act is amended by inserting, after section CI 10, the following section:

"CI 11. (1) If an employer elects to keep a test period record of use by an employee of a motor vehicle, the number of days of private use or enjoyment shown in the record will be used to calculate, under section CI 3, the value of any fringe benefit to the employee in respect of the vehicle.

"(2) The test period number will be used only for calculations in respect of quarters or other periods which fall wholly in the relevant application period.

"(3) The test period number of days will become item y of the formula in section CI 3 (1)(a) or, multiplied by 4, item y of the formula in section CI 3 (1)(c).

"(4) If the employer pays fringe benefit tax on a quarterly basis under section ND 2 or on an annual basis under section ND 3, the test period must be a quarter chosen by the employer.

"(5) If the employer pays fringe benefit tax on an income year basis under section ND 4, the test period must be 3 consecutive months of an income year chosen by the employer.

"(6) The employer must choose a test period which shows, or is likely to show, a pattern of use of the vehicle fairly representative of use by the employee over the whole of the relevant application period.

"(7) The employer must keep a record of the test period which includes accurate details of the days of private use or enjoyment, as defined, by the employee of the vehicle during the test period.

"(8) In calculating the test period number, days on which the vehicle is a work related vehicle will be treated as days on which the vehicle is not available for private use or enjoyment.

"(9) If the employer pays fringe benefit tax on a quarterly basis then, except to the extent that the application period is curtailed under any of subsections (12), (13), and (14) (a), the test period number will apply for an application period of 3 years which starts on the first day of the test period.

"(10) If the employer pays fringe benefit tax on an annual basis then, except to the extent that the application period is curtailed under any of subsections (12), (13), and (14) (a), the test period number will apply for an application period of 3 years which starts on the first day of the year in which the test period occurs.

"(11) If the employer pays fringe benefit tax on an income year basis then, except to the extent that the application period is curtailed under any of subsections (12), (13), and (14) (a), the test period number will apply for an application period of 3 years which starts on the first day of the income year in which the test period occurs.

"(12) The application period will end on the last day of any quarter, year, or income year (depending upon whether the employer pays fringe benefit tax on a quarterly, annual, or income year basis) if, during that quarter, year, or income year, the number of days of actual private use or enjoyment (calculated after deducting days on which the vehicle is a work related vehicle) is 20 or more percentage points higher than the figure established by using the test period number.

"(13) If the employer chooses to start another test period, the existing application period will end immediately before the start of the new application period.

"(14) If the Commissioner considers that the test period number is not, or is no longer, fairly representative of the actual private use or enjoyment by the employee of the vehicle, the Commissioner may notify the employer that—

"(a) The application period will end on a specified date; and

"(b) The test period number may not be used again.

If the Commissioner gives such a notice, it will apply in accordance with its terms.

"(15) If the employer replaces the motor vehicle with another vehicle but the test period number remains, or remains likely to be, fairly representative of the average private use and enjoyment (disregarding days on which the vehicle is a work related vehicle) of the vehicle by the employee during the

application period, this section will apply as if the replacement were the original vehicle.

"(16) References in this section to the 'private use or enjoyment' or 'actual private use or enjoyment' of a vehicle are to be taken to include references to the availability of that vehicle for private use or enjoyment."

(2) This section applies with respect to all fringe benefits provided on or after 1 April 1995.

13. Insurance with persons not carrying on business in New Zealand—(1) Section CN 4 of the principal Act is amended by inserting, after subsection (3), the following subsection:

"(3A) Where—

"(a) A person who is treated as an agent of an insurer under subsections (3) to (5) pays any premium to which subsection (1) applies to an insurer or to any other person not carrying on business in New Zealand through a fixed establishment in New Zealand; and

"(b) That insurer or that other person is treated as being resident in Switzerland or resident in the Netherlands for the purposes of any double tax agreement between the Government of New Zealand and the Government of Switzerland, or between the Government of New Zealand and the Government of the Netherlands,—

the person shall, in addition to any obligation imposed under subsections (3) to (5), disclose to the Commissioner details of premiums paid to the insurer or other person resident in Switzerland or the Netherlands in such manner as the Commissioner may prescribe."

(2) Section CN 4 (5) of the principal Act is amended by omitting the expression "subsection (2)", and substituting the expression "subsection (1)".

14. Deduction for interest where funds borrowed to purchase shares in amalgamating company—The principal Act is amended by repealing section DD 3, and substituting the following section:

"DD 3. Where—

"(a) An amalgamating company ceases to exist on a qualifying amalgamation; and

"(b) Another company has borrowed money to acquire shares in the amalgamating company; and

"(c) The amalgamating company and the other company were members of the same group of companies immediately before the amalgamation,—

interest payable, in the income year in which the amalgamation takes place or subsequently, on the money borrowed will be deductible in calculating the assessable income of the other company."

15. Deduction for expenditure or loss incurred in providing fringe benefits—The principal Act is amended by repealing section DF 9.

16. Limitation on deduction for expenditure on specified types of entertainment—(1) The principal Act is amended by repealing section DG 1, and substituting the following section:

"DG 1. (1) This section and Schedule 6A are intended to reduce, by 50%, the deduction otherwise available for expenditure or loss incurred on certain types of entertainment, being entertainment that generally involves a significant element of private benefit (but subject always to the express provisions of this section and Schedule 6A).

"(2) If a taxpayer incurs expenditure or loss on a type of entertainment or benefit (whether consumed or enjoyed by the taxpayer or by anyone else) specified in Part A of Schedule 6A then, unless and to the extent that the entertainment or benefit is specified as excluded entertainment in Part B of that Schedule, the deduction allowed for that expenditure or loss in calculating the taxpayer's assessable income will be limited to 50% of the amount that would be deductible but for this section.

"(3) For the purposes of this section—

"(a) A taxpayer will be treated as incurring expenditure on a specified type of entertainment to the extent that the taxpayer pays an allowance for, or reimburses an employee's expenditure on, the specified type of entertainment and the allowance or reimbursement is exempt from tax under section CB 12:

"(b) A taxpayer's expenditure or loss on a specified type of entertainment listed in clauses 1 to 3 of Part A of Schedule 6A includes any—

"(i) Depreciation deduction or deduction for lease premium under section EZ 6:

"(ii) Expenditure or loss on matters such as running costs and maintenance:

"(c) A taxpayer's expenditure or loss on a specified type of entertainment includes incidental expenditure or loss incurred on such matters as waiting staff, hireage of crockery, glassware or utensils, and music or other entertainment provided in association with the specified type of entertainment.

"(4) If a taxpayer incurs expenditure or loss which would be subject to subsection (2) only in part and if appropriately apportioned, subsection (2) will apply to that part of the expenditure so apportioned. If the taxpayer does not reasonably estimate the relevant part, the Commissioner may determine the relevant part to which subsection (2) applies."

(2) This section applies to all expenditure or loss incurred on or after 1 April 1995.

17. Expenditure on improvements in relation to aquaculture—Section DO 5 (3) (b) of the principal Act is amended by omitting from item a the expression "Part C of Schedule 7", and substituting the expression "Parts C to G of Schedule 7".

18. Accrual expenditure—Section EF 1 of the principal Act is amended by inserting, after subsection (5), the following subsection:

"(5A) For the purposes of this section, any payment to which section CB 12 (1) applies is deemed to be expenditure incurred by the payer as payment for services performed in the year or years in which the recipient of the payment is expected to incur the expenditure to which the payment relates."

19. Income and expenditure where financial arrangement redeemed or disposed of—(1) Section EH 4 (7) (a) of the principal Act is amended by omitting from the end of subparagraph (ii) the word "and", and substituting the word "or".

(2) Section EH 4 (7) (a) is further amended by inserting, after subparagraph (ii), the following subparagraph:

"(iii) Under a social assistance suspensory loan by virtue of that person satisfying the conditions referred to in section EH 4 (9) (ba) (ii); and".

(3) Section EH 4 (9) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

"(ba) The expression 'social assistance suspensory loan' means a loan—

"(i) Made by a department or instrument of the Executive Government of New Zealand; and

"(ii) Under whose terms the issuer's liability may be remitted in whole or in part if the issuer satisfies conditions intended to promote a social policy objective of the Government of New Zealand; and

"(iii) Of a kind that is declared by the Governor-General by Order in Council to be a social assistance suspensory loan:".

20. Refunds from adverse event income equalisation accounts—Section EI 14 (3) of the principal Act is amended by omitting the expression "section EI 12" where it first occurs, and substituting the expression "section EI 11".

21. New Subpart inserted—The principal Act is amended by inserting, after section EO 5, the following Subpart:

"SUBPART P—FOREIGN SOURCE INCOME

"EP 1. **Option to use foreign tax balance date**—(1) A taxpayer may elect under this section to recognise foreign source income in the income year in which the taxpayer's relevant annual income tax balance date in the relevant foreign country or territory falls.

"(2) The election will apply only to income which is subject to income tax (and not merely withholding tax) in a foreign country or territory and is accordingly included in one of the taxpayer's annual returns of income in the country or territory.

"(3) The income to which an election applies will be treated for the purposes of this Act as if derived by the taxpayer in the income year in which the relevant foreign income tax balance date falls, regardless of when it is in fact derived, unless the taxpayer has previously included the income in the taxpayer's annual return for the income year in which it was in fact derived.

"(4) A taxpayer makes an election under this section by completing the taxpayer's annual return of income accordingly.

"(5) If a taxpayer makes an election, it will apply for the purposes of that annual return and all subsequent annual returns unless the Commissioner agrees in writing to allow the

taxpayer to revoke the election or the income limit detailed in subsection (8) is exceeded.

"(6) If a taxpayer makes an election, it will apply to all the taxpayer's foreign source income subject to foreign income tax except for—

"(a) Interest or income derived or deemed to be derived under the qualified accruals rules, unless the Commissioner consents in writing; or

"(b) Dividends, unless the Commissioner consents in writing and the taxpayer is not a company; or

"(c) Attributed foreign income; or

"(d) Foreign investment fund income or income derived from an interest in a foreign investment fund.

"(7) In deciding whether to consent to an election applying to interest, income derived or deemed to be derived under the qualified accruals rules, or dividends, the Commissioner will consider—

"(a) Whether the taxpayer will incur significant compliance costs unless the election applies; and

"(b) The risk to the revenue if the election applies; and

"(c) Any other factors the Commissioner considers relevant.

"(8) A taxpayer's election will not apply to deem a taxpayer's foreign source income to be derived in an income year if, for that income year, the taxpayer's income to which the election would apply but for this subsection exceeds $100,000.

"(9) If subsection (8) applies, the taxpayer must—

"(a) Include in the annual return for the income year all foreign source income in fact derived in that year; and

"(b) If necessary, amend the previous year's annual return to include income in fact derived in that previous year to which the election would have applied but for subsection (8).

"(10) If a taxpayer ceases to be or becomes resident in New Zealand, this section will apply in the same way as for other taxpayers except that—

"(a) It will not apply to income in fact derived while the taxpayer was not resident in New Zealand; and

"(b) If it applies to deem income, in fact derived while the taxpayer was resident in New Zealand, to be derived after the taxpayer has ceased to be resident in New Zealand, the taxpayer will remain liable to income tax on that income.

"(11) In this section—

" 'Annual income tax balance date' includes a date which, in the opinion of the Commissioner, is substantially equivalent to an annual income tax balance date:

" 'Foreign source income' means income which is not derived from New Zealand."

22. Entertainment expenditure—(1) Section FB 5 of the principal Act is repealed.

(2) This section applies to all expenditure or loss incurred on or after 1 April 1995.

23. Deduction to lessee under specified lease—The principal Act is amended by repealing section FC 8, and substituting the following section:

"FC 8. Notwithstanding anything in this Act, in calculating the assessable income derived in an income year by a lessee, no deduction shall be allowed of any expenditure incurred by the lessee under a specified lease except to the extent that the expenditure—

"(a) Would be allowable as a deduction to the lessee under section BB 7 or any other provision of this Act; and

"(b) Does not exceed the sum of such of the amounts (being amounts calculated in accordance with section FC 7 (2) (a)) as are calculated in relation to the initial period (if any) and to each instalment period that ends in that income year."

24. Special provisions relating to dispositions of property—Section FD 10 (1) of the principal Act is amended by omitting paragraph (a), and substituting the following paragraph:

"(a) Depreciating property of the transferor; or".

25. Amalgamation of companies—purpose—Section FE 1 (2) of the principal Act is amended by omitting the expression "FE 8", and substituting the expression "FE 10".

26. Acquisition of property by amalgamated company on a qualifying amalgamation—Section FE 6 of the principal Act is amended by inserting, after subsection (1), the following subsection:

"(1A) Where any amalgamated company, on a qualifying amalgamation, acquires any property of an amalgamating company, then for the purposes of this Act and except where

otherwise provided in the succeeding subsections of this section,—

"(a) The amalgamating company shall be deemed to have disposed of the property immediately before the amalgamation; and

"(b) The amalgamating company shall be deemed not to derive any assessable income or to have incurred any expenditure or loss in respect of that disposition under section EG 19."

27. New sections inserted—The principal Act is amended by inserting, after section FE 8, the following sections:

"FE 9. **Amalgamation not to result in deemed income or remission of liabilities**—Sections BB 5 (1) and IE 1 (6) will not apply merely by virtue of an amalgamated company succeeding to a liability of an amalgamating company on an amalgamation.

"FE 10. **Treatment of financial arrangements between amalgamating companies**—(1) This section will apply for the purposes of this Act where a financial arrangement exists at the time of an amalgamation and to the extent to which the holder and the issuer are amalgamating companies.

"(2) If, immediately before the amalgamation, the issuer is solvent or otherwise likely (including due to the existence of security) to be able to meet its obligations under the financial arrangement, the financial arrangement will be deemed for the purposes of section EH 4 to have been discharged immediately before the amalgamation and the issuer will be deemed to have paid to the holder, in consideration for the discharge,—

"(a) In the case of a qualifying amalgamation, the issuer's outstanding accrued balance of the financial arrangement:

"(b) In the case of any other amalgamation, an amount equal to the market value of the financial arrangement at that time.

"(3) In any case where subsection (2) applies, the holder of the financial arrangement will be deemed for the purposes of item a of section EH 4 (1) not to have remitted any amount merely by virtue of the deemed discharge.

"(4) If, immediately before the amalgamation, the issuer is insolvent and unlikely to be able to meet its obligations under the financial arrangement, the financial arrangement will be deemed for the purposes of section EH 4 to have been

discharged immediately before the amalgamation and the issuer will be deemed to have paid to the holder, in consideration for the discharge, an amount equal to the market value of the financial arrangement at that time.

"(5) In any case where subsection (4) applies, the holder of the financial arrangement will be deemed, for the purposes of item a of section EH 4 (1), to have remitted the excess (if any), over the market value, of the holder's outstanding accrued balance of the financial arrangement.

"(6) For the purposes of this section—

"(a) The issuer's outstanding accrued balance of a financial arrangement at the time of an amalgamation will be calculated under the following formula:

$$a + b + c - d - e$$

where—

"a is the acquisition price of the financial arrangement in relation to the issuer; and

"b is the amount (if any) of all expenditure deemed to be incurred by the issuer, less the amount (if any) of all income deemed to be derived by the issuer, in respect of the financial arrangement under section EH 1 or section EH 6 in all previous income years since the issue of the financial arrangement; and

"c is the amount (if any) of expenditure accrued by the issuer in respect of the financial arrangement for the period from the start of the income year in which the amalgamation occurs until the time of the amalgamation, calculated—

"(i) In any case where the issuer was a party to the financial arrangement in one or more prior income years, using the method used by the issuer under section EH 1 to calculate income and expenditure in respect of the financial arrangement in those years; and

"(ii) In any other case, using a method which the issuer chooses, being a method which could have been used under section EH 1 if the income year had ended immediately before the amalgamation; and

"d is the amount (if any) of income accrued by the issuer in respect of the financial arrangement for the period from the start of the income year in which the amalgamation occurs until the time of the amalgamation, calculated as required by paragraphs (i) and (ii) of item c of this formula; and

"e is the amount of all consideration paid by the issuer in respect of the financial arrangement before the amalgamation:

"(b) The holder's outstanding accrued balance of a financial arrangement at the time of an amalgamation will be calculated under the following formula:

$$a + b + c - d - e$$

where—

"a is the acquisition price of the financial arrangement in relation to the holder; and

"b is the amount (if any) of all income deemed to be derived by the holder, less the amount (if any) of all expenditure deemed to be incurred by the holder, in respect of the financial arrangement under section EH 1 or section EH 6 in all previous income years since the issue of the financial arrangement; and

"c is the amount (if any) of income accrued by the holder in respect of the financial arrangement for the period from the start of the income year in which the amalgamation occurs until the time of the amalgamation, calculated—

"(i) In any case where the holder was a party to the financial arrangement in one or more prior income years, using the method used by the holder under section EH 1 to calculate income and expenditure in respect of the financial arrangement in those years; and

"(ii) In any other case, using a method which the holder chooses, being a method which could have been used under section EH 1 if the income year had ended immediately before the amalgamation; and

"d is the amount (if any) of expenditure accrued by the holder in respect of the financial arrangement for the period from the start of the income year in which the amalgamation occurs until the time of the amalgamation, calculated as required by paragraphs (i) and (ii) of item c of this formula; and

"e is the amount of all consideration paid to the holder in respect of the financial arrangement before the amalgamation:

"(c) A company will be treated as insolvent if it does not satisfy the solvency test in section 4 of the Companies Act 1993."

28. Credit of tax by instalments—Section KD 5 of the principal Act is amended by repealing subsection (8), and substituting the following subsection:

"(8) Where a person—

"(a) Expects that in any specified period the person will be entitled to receive an income-tested benefit; or

"(b) Has applied to the Director-General of Social Welfare under section KD 6 (1A) for a credit of tax to be paid for a period after an income-tested benefit has ceased,—

the person is not entitled to make an application under subsection (2) of this section in relation to that period, and section KD 6 shall apply in relation to the person and the period."

29. Director-General to deliver credit of tax to persons on income-tested benefits—(1) Section KD 6 of the principal Act is amended by inserting, after subsection (1), the following subsection:

"(1A) Where the Director-General ceases to pay to any person an income-tested benefit, the Director-General will, if the person applies, continue to pay to the person, for a period determined by the Director-General in consultation with the Commissioner, an amount of credit of tax determined as if the person were still being paid an income-tested benefit during the period."

(2) Section KD 6 (2) of the principal Act is amended—

(a) By inserting, after the expression "subsection (1)", the expression "or subsection (1A)":

(b) By omitting the words "that subsection", and substituting the words "either of those subsections".

30. Commissioner to deliver credit of tax by instalments—Section KD 7 of the principal Act is amended by inserting, after subsection (3), the following subsection:

"(3A) Where in any income year the Director-General of Social Welfare ceases to pay to any person a credit of tax, the Commissioner may, on application by the person, pay to the person the amount of the credit of tax that the Commissioner determines the person would be entitled to for the period that—

"(a) Commences on the later of—

"(i) The first day of the income year; and

"(ii) The day following that on which the Director-General ceases payment of any credit of tax to the person; and

"(b) Ends on the day preceding the first day specified in a certificate of entitlement subsequently issued to the person under section KD 5."

31. Resident withholding tax deductions to be credited against income tax assessed—Section LD 3 (2) of the principal Act is amended by inserting, after the words "shall refund to the person an amount equal to", the words "the excess of".

32. Dividends from grey list companies—Section LF 5 of the principal Act is amended by inserting, after subsection (3), the following subsection:

"(3A) Where a company carries on the business of providing life insurance, subsection (2) shall apply as if the amounts referred to in subparagraphs (i) to (v) of paragraph (a) of item a in that subsection were limited to such amounts as are actuarially determined to be part of the profit or loss of the company which the shareholders (and not the policyholders in the company) are attributed with, except where the Commissioner—

"(a) Considers that the amounts so determined are not a reasonable and fair reflection of the relevant part of the profit or loss; or

"(b) Has requested but has not received sufficient information to allow the Commissioner to review the actuarial calculation of the amount."

33. Amount of provisional tax payable—(1) Section MB 2 (3) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:

"(d) The amount of residual income tax (if any) for the immediately preceding income year, where—

"(i) The taxpayer is not required under this Act or the Tax Administration Act 1994 to furnish a return of income for that preceding year; or

"(ii) The taxpayer (being a taxpayer whose residual income tax for the income year preceding that preceding year was less than $2,500) is not required to furnish and has not furnished a return for that preceding year on or before the third instalment date."

(2) This section applies with respect to the tax on income derived in the 1995–96 income year and subsequent years.

34. Provisional tax payable in 1, 2, or 3 instalments—(1) Section MB 4 of the principal Act is amended by repealing subsections (2) and (3), and substituting the following subsections:

"(2) Provisional tax shall be payable by a taxpayer in 2 instalments, with each instalment being calculated and due and payable in accordance with section MB 5 (2), by—

"(a) A new provisional taxpayer whose first business day occurs on or after the day which is 30 days before the first instalment date and is more than 30 days before the second instalment date; or

"(b) A taxpayer whose return of income for the immediately preceding income year is furnished after the first instalment date and on or before the second instalment date where—

"(i) The taxpayer is required to furnish a return for that immediately preceding income year but, under section 37 of the Tax Administration Act 1994 or any extension granted under that section, is not required to furnish the return on or before the first instalment date; and

"(ii) The taxpayer's residual income tax for the year before the immediately preceding income year was less than $2,500.

"(3) Provisional tax shall be payable by a taxpayer in one instalment, with the instalment being calculated and due and payable in accordance with section MB 5 (3), by—

"(a) A new provisional taxpayer whose first business day occurs on or after the day that is 30 days before the second instalment date; or

"(b) A taxpayer (not being a new provisional taxpayer)—

"(i) Whose residual income tax for the income year exceeds $300,000; but

"(ii) Whose residual income tax for the immediately preceding income year did not exceed $2,500; or

"(c) A taxpayer whose return of income for the immediately preceding income year is not furnished on or before the second instalment date where—

"(i) The taxpayer is required to furnish a return for that immediately preceding income year but, under section 37 of the Tax Administration Act 1994 or any extension granted under that section, is not required to furnish the return on or before the second instalment date; and

"(ii) The taxpayer's residual income tax for the income year before the immediately preceding income year was less than $2,500."

(2) This section applies with respect to the tax on income derived in the 1995–96 income year and subsequent years.

35. Debits arising to imputation credit account—Section ME 5 of the principal Act is amended—

(a) By inserting in subsection (1) (i), after the words "cancelled out by a", the words "prior or":

(b) By inserting in subsection (4) (b), after the words "cancelled out by a", the words "prior or":

(c) By inserting in subsection (4) (c), after the words "cancelled out by any", the words "prior or".

36. Credits arising to imputation credit account of group—Section ME 11 of the principal Act is amended by omitting from both subsection (1) (b) and subsection (2) (b) the expression "section MB 8", and substituting in each case the expression "section MB 9".

37. Debits arising to imputation credit account of group—Section ME 12 of the principal Act is amended by omitting from both subsection (1) (c) and subsection (2) (c) the expression "section MB 8", and substituting in each case the expression "section MB 9".

38. Debits arising to dividend withholding payment account—Section MG 5 of the principal Act is amended—

(a) By inserting in subsection (1)(i), after the words "cancelled out by a", the words "prior or":

(b) By inserting in subsection (4)(b), after the words "cancelled out by a", the words "prior or":

(c) By inserting in subsection (4)(c), after the words "cancelled out by any", the words "prior or".

39. Application of tax codes specified in tax code declarations or tax code certificates—(1) Section NC 8 (1) of the principal Act is amended by inserting, after paragraph (f), the following paragraphs:

"(g) 'CAW', signifying an employee in relation to whom the source deduction payment is a payment of salary or wages for employment as a casual agricultural worker:

"(h) 'EDW', signifying an employee in relation to whom the source deduction payment is a payment of salary or wages for employment as an election day worker:".

(2) Section NC 8 is further amended by inserting in both subsection (7) and subsection (8), in each case after the expression "SSH", the expression "or 'CAW' or 'EDW' ".

40. Amount of total tax deduction where several deductions made for one week—Section NC 10 is amended by omitting from the second proviso the words "or as a shearing shed hand", and substituting the words ", a shearing shed hand, a casual agricultural worker, or an election day worker".

41. Dividend withholding payments and consolidated groups—Section NH 5 (5) of the principal Act is amended by inserting, after the words "section NH 4 (1) in relation to dividend withholding payment", the words "that was paid".

42. Definitions—(1) Section OB 1 of the principal Act is amended by omitting from the definition of "additional transport costs" the expression "section CB 12 (7)", and substituting the expression "section CB 12 (4)".

(2) Section OB 1 is further amended by repealing the definition of "allowance in respect of or in relation to the employment or service of any person".

(3) Section OB 1 is further amended by inserting, after the definition of "annual imputation return", the following definition:

" 'Annual income tax balance date' is defined in section EP 1 (11) for the purposes of that section:".

(4) Section OB 1 is further amended by repealing the definition of "award".

(5) Section OB 1 is further amended by inserting, after the definition of "benefit from money advanced", the following definition:

" 'Binding ruling' has the same meaning as in section 3 of the Tax Administration Act 1994:".

(6) Section OB 1 is further amended by repealing the definition of "business", and substituting the following definitions:

" 'Business'—

"(a) Includes any profession, trade, manufacture, or undertaking carried on for pecuniary profit:

"(b) Is further defined in Schedule 6A for the purposes of that Schedule:

" 'Business contacts' is defined in Schedule 6A for the purposes of that Schedule:".

(7) Section OB 1 is further amended by inserting, after the definition of "business of farming", the following definition:

" 'Business premises' is defined in Schedule 6A for the purposes of that Schedule:".

(8) Section OB 1 is further amended by inserting, after the definition of "capital improvement", the following definition:

" 'Casual agricultural worker' means a person engaged on a day to day basis for a period not exceeding 3 months as a casual seasonal worker for the exclusive purpose of doing seasonal agricultural, horticultural, orchard, tobacco farming, market gardening, or nursery work, or other seasonal work that, in the opinion of the Commissioner, is work of a like nature to those classes of work:".

(9) Section OB 1 is further amended by omitting from paragraph (a) of the definition of "close of trading spot exchange rate" the word "before", and substituting the word "being".

(10) Section OB 1 is further amended by inserting, after the definition of "depreciable property", the following definition:

" 'Depreciating property', in sections FD 10 and FE 6, means, in relation to a taxpayer, property in respect

of which the taxpayer has claimed or will claim in calculating the taxpayer's assessable income a deduction on account of—

"(a) Depreciation under section EG 1; or

"(b) Amortisation of expenditure under section EZ 5, section EZ 6, or any other amortisation provision:".

(11) Section OB 1 is further amended by inserting, after the definition of "elected period", the following definition:

" 'Election day worker' means a person engaged as a Deputy Returning Officer, poll clerk, interpreter, or usher, or for any other purpose, in relation to—

"(a) Any election or poll which is held under the provisions of the Electoral Act 1993 or the Local Elections and Polls Act 1976 or the Local Restoration Polls Act 1990, or to which any of the provisions of any of those Acts apply; or

"(b) Any election or poll held or conducted simultaneously with and in the same premises as any election or poll referred to in paragraph (a),—

where the person is paid by the authority controlling the election or poll and the payment is exclusively for work done or services rendered immediately before, on, or immediately after the day on which the election or poll is held or taken:".

(12) Section OB 1 is further amended by repealing the definitions of "eligible conference", "entertainment", and "entertainment facility".

(13) Section OB 1 is further amended by repealing paragraph (g) of the definition of "exempt interest".

(14) Section OB 1 is further amended by inserting, after the definition of "foreign non-dividend income", the following definition:

" 'Foreign source income' is defined in section EP 1 (11) for the purposes of that section:".

(15) Section OB 1 is further amended by repealing paragraph (b)(iii) of the definition of "income from employment".

(16) Section OB 1 is further amended by inserting, after the definition of the term "option", the following definition:

" 'Other amortisation provision' means any provision of this Act which has similar intent and application to sections EG 1, EZ 5, and EZ 6:".

(17) Section OB 1 is further amended by omitting from the definition of "public passenger transport system" the expression "section CB 12 (7)", and substituting the expression "section CB 12 (4)".

(18) Section OB 1 is further amended by repealing the definition of "recreation".

(19) Section OB 1 is further amended by inserting, after the definition of "sick, accident, or death benefit fund", the following definition:

" 'Social assistance suspensory loan' is defined in section EH 4 (9)(ba) for the purposes of that section:".

(20) Section OB 1 is further amended by inserting, after the definition of "specified trading stock", the following definition:

" 'Specified type of entertainment' means a type of entertainment or benefit listed in Part A of Schedule 6A:".

43. Meaning of term "source deduction payment"—Section OB 2 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:

"(4) In this section, in respect of any time before 1 April 1997, the term 'close company' includes a company with 25 or fewer shareholders."

44. Meaning of "pay-period taxpayer"—Section OB 4 (1) of the principal Act is amended by inserting in paragraph (g), after the words "income derived from employment", the words "(excluding New Zealand superannuation)".

45. Meaning of "income tax"—Section OB 6 (1) of the principal Act is amended by inserting in paragraph (b), after the expression "CZ 4,", the expression "EP 1,".

46. Defining when a company is under the control of any persons—Section OD 1 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

"(2) For the purposes of this section, where any person (referred to in this subsection as the 'nominee') holds any rights at any time—

"(a) On behalf of or to the order of another person; or

"(b) Being a relative at the time of another person,—

the rights shall be deemed to be held at the time by the other person as well as by the nominee, as if the nominee, the other

person, and all other such nominees of the other person were at the time a single person."

47. Further definitions of associated persons—Section OD 8 (4) of the principal Act is amended by inserting in paragraph (b) (iv), before the words "such spouse", the words "the person or for".

48. Classes of income deemed to be derived from New Zealand—Section OE 4 (1) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:

"(d) Payments of compensation or allowances of any of the kinds referred to in section CC 1 (a) and (b):".

49. References to income years in particular provisions—Section OF 2 (2) of the principal Act is amended—

(a) By inserting in paragraph (h) (i), after the expression "EC 1,", the expression "ED 1,":

(b) By inserting in paragraph (h) (i), after the expression "EG 1 to EG 15,", the expression "EG 19,":

(c) By inserting in paragraph (i) (i), after the expression "FF 15,", the expression "FF 16,".

50. References to particular regimes in former Act, etc.—Section OZ 1 (1) of the principal Act is amended by adding to the definition of "FBT rules" the words "; and includes section CI 11 (being a provision inserted after the original enactment of this Act)".

51. Application of this Act and Tax Administration Act 1994 to late 1994–95 income years—The principal Act is amended by inserting, after section YB 6, the following section:

"YB 7. If any amendment to this Act or the Tax Administration Act 1994 is expressed—

"(a) To come into force on the specific date of 1 April 1995, or any other specific date (including a date identified by reference to a date of Royal assent or the date on which an enactment comes into force or commences) up to and including 30 September 1995; or

"(b) To apply to any event, transaction, state of affairs, or other matter occurring or existing on or after any such specific date,—

that amendment will apply, as if it amended to identical effect the corresponding provision in the Income Tax Act 1976 or the Inland Revenue Department Act 1974, on and after that specific date in relation to a taxpayer with a late 1994–95 income year, unless otherwise expressly provided or the context otherwise requires."

52. New Schedule 6A inserted—The principal Act is amended by inserting, after Schedule 6, the Schedule 6A set out in the Schedule to this Act.

53. Schedule 19 amended—(1) Schedule 19 of the principal Act is amended by inserting, after clause 7, the following clauses:

"7A. **Payments to casual agricultural workers**—From every payment of salary or wages for employment as a casual agricultural worker, in respect of which the casual agricultural worker has delivered to the employer a tax code declaration under section NC 8 specifying the tax code 'CAW', the basic tax deduction shall be an amount calculated on the amount of the payment at the rate of 20 cents per $1.

"7B. **Payments to election day workers**—From every payment of salary or wages for employment as an election day worker, in respect of which the election day worker has delivered to the employer a tax code declaration under section NC 8 specifying the tax code 'EDW', the basic tax deduction shall be an amount calculated on the amount of the payment at the rate of 20 cents per $1."

(2) The Income Tax (Withholding Payments) Regulations 1979 (as amended by the Income Tax (Withholding Payments) Regulations 1979, Amendment No. 1) are amended by revoking the following provisions:

(a) The definition of "casual agricultural worker" in regulation 2 (1):

(b) Regulation 3:

(c) Clause 10 of Part A of the Schedule:

(d) Clause 6 of Part B of the Schedule.

(3) The Income Tax (Withholding Payments) Regulations 1979, Amendment No. 1 are consequentially revoked.

Correction of Errors in Translation to Principal Act of Provisions of Income Tax Act 1976

54. Amendment of sections CM 15, EG 4, JB 2, LC 1, OB 1, OD 8, and OZ 1 to correct errors—The principal Act is amended—

(a) By omitting from the top line of the formula in section CM 15 (1) the expression "(v1 × v0)", and substituting the expression "(v1 − v0)":

(b) By omitting the formula in section EG 4 (3), and substituting the following formula:

$$1 - \left(\left(\frac{\text{residual value}}{\text{cost}} \right)^{\frac{1}{\text{estimated useful life}}} \right)$$

(c) By omitting the formula in section JB 2 (3), and substituting the formula "a − (b − c)":

(d) By omitting from LC 1 (4) the expression "and CF 6", and substituting the expression ", CF 6, and OE 6":

(e) By omitting from paragraph (a) of the definition of "adjusted tax value" in section OB 1 the words "paragraph (i) or paragraph (ii) or paragraph (iii)" where they appear in paragraph (i) of item bv, and substituting the words "paragraph (ii) or paragraph (iii) or paragraph (iv)":

(f) By omitting from section OD 8 (3) the words "paragraph (ii) of the item", and substituting the words "paragraph (iv) of the item":

(g) By further omitting from section OD 8 (3) the expression "HJ 11" where it twice occurs, and substituting in each case the expression "HK 11":

(h) By inserting in the definition of "imputation rules" in section OZ 1, after the words "means sections", the expression "CF 6 (1) and (2),".

55. Amendment of consequential amendments to correct errors—Schedule 20 to the principal Act is amended—

(a) By repealing the items relating to sections 70A (2) and 80B (3) of the Social Security Act 1964, and those items shall be treated as if they had never been enacted:

(b) By omitting from the second column of the item relating to the Rates Rebate Act 1973 the expression "(d) (iv)", and substituting the item "(d) (vi)":

(c) By omitting from the second column of the item relating to section 34 of the Goods and Services Tax Act 1985 the expression "34 (3)", and substituting the expression "34 (2)".

56. Correction of errors in comparative tables of new and old provisions—Part A of Schedule 23 to the principal Act is amended—

(a) By omitting the word "omitted" from the second column of the item relating to section 4B (3) to (6) of the Income Tax Act 1976, and substituting the expression "OB 1":

(b) By inserting, after the item relating to section 65 of the Income Tax Act 1976, the following item:

"65A ... ... omitted":

(c) By omitting the word "omitted" from the second column of the item relating to section 414 (2A) (b) of the Income Tax Act 1976, and substituting the expression "TAA 176 (2) (b)".

SCHEDULE

Section 52

NEW SCHEDULE 6A INSERTED IN PRINCIPAL ACT

"SCHEDULE 6A

Section DG 1

"SPECIFIED TYPES OF ENTERTAINMENT

Part A

Specified Types of Entertainment

1. **Corporate boxes, etc.**—Corporate boxes, corporate marquees or tents, and similar exclusive areas (whether permanent or temporary), at sporting, cultural, or other recreational events or activities occurring off the business premises of the taxpayer (including tickets or other rights of entry to such boxes or other areas).
2. **Holiday accommodation**—Accommodation in a holiday home, time-share apartment, or similar leisure venue (not including accommodation which is merely incidental to business activities or employment duties).
3. **Pleasure craft**—Yachts or other pleasure craft.
4. **Food and beverages**—Food or beverages—
   (a) Provided or consumed as an incidence of any of the types of entertainment specified in clauses 1 to 3; or
   (b) Provided or consumed off the business premises of the taxpayer; or
   (c) Provided or consumed on the business premises of the taxpayer—
      (i) At a party, reception, celebration meal, or other similar social function; or
      (ii) In an area of the premises, such as a boardroom or an executive or client dining room, reserved for use at the time only by those at a certain level of seniority and their guests and not open to all employees of the taxpayer working in the premises.

Part B

Excluded Entertainment

1. Food or beverages consumed while travelling in the course of business activities or employment duties, unless—
   (a) The travel is principally for the purposes of enjoying entertainment; or
   (b) Consumed at a meal or other function at which an existing or potential business contact is a guest; or
   (c) Consumed at a party, reception, celebration meal, or other similar social function.
2. Food or beverages consumed at a conference, educational course, or similar event which lasts for at least 4 consecutive hours (excluding meal times) unless the event is principally for the purposes of entertainment.
3. A reasonable amount of food or beverages consumed by an employee to the extent that—
   (a) By reason of the employee working overtime, the employer pays an overtime meal allowance or similar reimbursement

SCHEDULE—*continued*

NEW SCHEDULE 6A INSERTED IN PRINCIPAL ACT—*continued*

"SCHEDULE 6A—*continued*

"SPECIFIED TYPES OF ENTERTAINMENT—*continued*

payment to the employee in respect of the cost of the food or beverages; and

(b) That allowance or reimbursement payment is exempt under section CB 12.

4. A reasonable amount of food or beverages provided by a person as a morning or afternoon tea or as a light refreshment of similar quantity and quality to a morning or afternoon tea—
   (a) In an area of the person's premises referred to in clause 4 (c) (ii) of Part A of this Schedule; or
   (b) At a conference, educational course, or similar event, unless the event is principally for the purposes of entertainment.
5. A reasonable amount of food or beverages (in the nature of a light meal) provided by an employer to employees in an area of the employer's premises referred to in clause 4 (c) (ii) of Part A of this Schedule where the light meal is enjoyed as part of the employee's business or employment duties.
6. Entertainment that is merely an incidental part of a function open to the public or a trade display principally held to advertise or promote a business or goods or services.
7. Entertainment that is enjoyed or consumed outside New Zealand.
8. Entertainment to the extent to which it is sponsored principally to advertise or promote to the public a business or goods or services and none of the following have a greater opportunity to enjoy the entertainment than members of the public generally:
   (a) Existing business contacts; or
   (b) Employees; or
   (c) Associated persons—

   of the taxpayer (or of any person whose business, goods, or services are being advertised or promoted).
9. Entertainment that is provided by the taxpayer for market value (or otherwise in an arm's length transaction) in the ordinary course of the taxpayer's business which consists of providing one or more specified types of entertainment.
10. Entertainment that is a sample provided for advertising or promotion purposes to a person who is not an employee of, or associated with, the taxpayer.
11. Entertainment that is provided to members of the public for charitable purposes.
12. Entertainment that is provided to a person who is reviewing it for a paper, magazine, book, or other medium.
13. Entertainment that is assessable income of the person who enjoys or consumes it.
14. Entertainment that is a fringe benefit to which fringe benefit tax applies.

SCHEDULE—*continued*

NEW SCHEDULE 6A INSERTED IN PRINCIPAL ACT—*continued*

"SCHEDULE 6A—*continued*

"SPECIFIED TYPES OF ENTERTAINMENT—*continued*

Definitions

In this Schedule, in respect of a taxpayer,—

'Business' includes any recurrent income-earning activity:

'Business contacts' includes clients, customers, suppliers, shareholders, and other financiers of the taxpayer or of an associated person; but does not, in the case of a taxpayer who is a partner in a partnership, include other partners in the partnership:

'Business premises' means—

(a) The normal business premises; or

(b) A temporary workplace,—

of the taxpayer or of an associated person (not being premises or a workplace established principally for the purposes of enjoying entertainment)."

This Act is administered in the Inland Revenue Department.